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FILED
AUG 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

MARLENE J. ROJICEK,
Petitioner

vs.

WILLIAM J. COOLEY, BRUCE BELL
and ARTHUR BUCZKOWSKI,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner's right of due process guaranteed by the Fifth Amendment to the United States Constitution has been violated by the District Court's failure to intervene under the circumstances.

2. Whether the District Court's negligence in repeatedly and consistently failing to enforce its previous evidentiary rulings during opposing counsel's summation and its corresponding refusal to allow petitioner's attorney to raise objections during this same summation violated Petitioner's right of due process guaranteed by the Fifth Amendment to the United States Constitution as well as Petitioner's access to the justice system and her substantive right to be believed.

3. Whether the District Court's discretionary acceptance of "trial strategy" violated the Petitioner's right of privacy guaranteed by the Ninth Amendment to the United States Constitution and resulted in a violation of Petitioner's right of due process guaranteed by the Fifth Amendment to the United States Constitution.

4. Whether the District Court's protection of opposing counsel's First Amendment rights can supercede a Petitioner's right of due process guaranteed by the Fifth Amendment to the United States Constitution and the substantive right to be believed by the jury.

5. Whether the District Court's failure to protect Petitioner's access to the civil justice system denied her the rights afforded to her under 42 U.S.C. 1983 and negated the intent of Congress when exacting 42 U.S.C. 1983.

6. Whether the District Court has a responsibility not subject to judicial discretion to extend Petitioner's access to the civil justice system in actions brought under 42 U.S.C. 1983 beyond the trial itself.

7. Whether the Appeals Court's failure to protect Petitioner's access to the civil justice system denied her the right of due process guaranteed by the Fifth Amendment to the United States Constitution.

8. Whether the District Court's admission into evidence of petitioner's personal property (confiscated during and not germane to an arrest and later seized by the arresting police officer from a police file in anticipation of a 42 U.S.C. 1983 action) not only allowed Petitioner's First, Fourth, and Fifth Amendment rights to be violated but also negated the intent of Congress when enacting 42 U.S.C. 1983.

9. Whether the right to effective legal counsel guaranteed under the Sixth Amendment to the United States Constitution in criminal proceedings should be extended to include actions under 42 U.S.C. 1983 because of the intent of Congress when enacting 42 U.S.C. 1983.

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PETITION FOR A WRIT OF CERTIORARI
From the United States Court of Appeals
For The Second Circuit.

Petitioner, MARLENE J. ROJICEK, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered May 13, 1987 denying rehearing of its April 7, 1987 judgment affirming the judgment of the United States District Court for the Western District of New York.

JURISDICTION

This judgment of The Court of Appeals denying rehearing was entered May 13, 1987. This Court has jurisdiction under 20 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. First Amendment
2. Fourth Amendment
3. Fifth Amendment
4. Sixth Amendment
5. Ninth Amendment
6. Fourteenth Amendment
7. 42 U.S.C. 1983
8. 42 U.S.C. 1985

STATEMENT OF CASE

GENERAL

By complaint dated December 19, 1980, petitioner Marlene J. Rojicek commenced a civil rights action under 42 U.S.C. 1983 and 1985 against New York State Police Investigator Cooley, Trooper Bell, and Trooper Buczkowski, charging that the officers had violated her civil rights.

Jurisdiction was conferred upon the United States District Court, Western District of New York by the provisions of 28 U.S.C. 1343.

BACKGROUND OF ARREST

This civil rights action arose from the arrest of the petitioner on 10/17/79 in Hamburg, N.Y., on the charges of third degree burglary and harassment. Defendant Bell, the arresting officer and the son of the complainants, Albert and

Catherine Bell, went from Clarence, N.Y., to Hamburg, N.Y., (26 miles) to make an off duty, out of district arrest at the request of his father. Just prior to this arrest, Defendant Bell planted keys in the petitioner's purse to hide the true nature for her presence at the Bell residence. Defendant Buczkowski arrived shortly afterwards and both troopers took the petitioner to the Orchard Park, N.Y., State Police Barracks without permission of the Hamburg Town Police who had jurisdiction in this arrest.

Upon arrival at the barracks, the petitioner was turned over to Defendant Cooley. After conferring with the complainants, Cooley offered the petitioner her release from arrest in exchange for surrendering a contract she had negotiated with Albert Bell. (This contract was paid in full by settlement of a

breach of contract suit against Albert Bell in the N.Y. State Supreme Court on 10/1/85 for $16,800). The petitioner refused this extortion attempt and requested to call a Buffalo, N.Y. attorney, Richard Gordon. Defendant Cooley, as well as the other defendants, refused to permit the petitioner to call legal counsel and the petitioner was unable to call counsel until 24 hours after arrest. She was not allowed to contact any family member or anyone else until 45 hours after her arrest.

Additionally, the petitioner was in need of medical attention. She had been released from Buffalo General Hospital, New York, approximately 5 hours before her arrest after a two-day hospitalization for an induced saline solution abortion and had undergone 21 hours of labor. The contract was for the payment

of medical, legal, and readjustment expenses necessitated by the abortion and was between Albert Bell, the father of Defendant Bell, and the petitioner.

Albert Bell was represented by Paul Cambria, a Buffalo, N.Y., attorney during the period preceding the abortion. His law firm continued to represent Albert Bell during the six years it took to reach the out-of-court settlement of the state breach of contract suit. The petitioner was a resident of Clearwater, Florida when she became pregnant by Albert Bell and retained Sondra Goldenfarb, a Clearwater attorney, to represent her in a future paternity suit.

The pregnancy was not carried to term but terminated through a saline solution abortion at Buffalo, N.Y. General hospital during October 15-17, 1979.

The Petitioner met with Albert Bell at the Buffalo Airport on September 30, 1979. This was approximately two weeks prior to the abortion. Al Bell had paid Petitioner's roundtrip airfare to Buffalo from Florida to discuss financial expenses. Neither had their attorneys present. A contract was drawn up for expenses incidental to the abortion--legal, medical, and readjustment expenses which Albert Bell, a multimillionaire, agreed to pay.

On 10/17/79--After the abortion was completed--Albert Bell breached the contract. Petitioner met Albert Bell outside the hospital and was told by him that she should follow him in her own car to his attorney's office so that final details could be completed with his lawyer. On the way to Paul Cambria's office, Albert Bell drove into a

construction site in Downtown Buffalo. Petitioner followed him there. He got out of his car and threw $500 at the petitioner telling her to get lost--that Buffalo was his home town and that petitioner should continue to Chicago because she would never get justice in Buffalo. He then got back into his own car and sped away from the Petitioner. The petitioner was originally from the Chicago area and was in transit there after quitting her job in Florida and coming to Buffalo for the abortion.

Due to the psychological and physical duress caused by the abortion and Albert Bell's deceit, petitioner ended up breaking into Albert Bell's home to confront the situation. She originally had waited at his home but because of certain physical infirmities caused by

the abortion entered the home to get refuge and await the arrival of either Mr. or Mrs. Bell.

The petitioner was physically attacked by Albert Bell when he came home less than one half hour prior to her arrest. Although the extent of this injury was unknown at the time, the injury was subsequently diagnosed as a slipped disc of the second vertebrae. Cooley was most adamant in denying medical treatment for the petitioner, i.e., you don't co-operate (turn over the contract) we don't co-operate (supply needed medical attention). The other two defendants were well aware of the petitioner's medical condition and did not help her. Defendant Buczkowski told the petitioner that she could not get medical attention unless she signed a confession first. The petitioner refused to sign a

confession--none was prepared--nor did she sign any waiver of her rights nor was any waiver presented to her.

All three defendants were also aware of the psychological trauma the petitioner had undergone because of this abortion and the duress she was in. All knew of her extensive medical history of primary infertility, i.e., five operations for endometriosis, artificial insemination, former husband's testicular cancer, etc.. This was petitioner's first (and only) pregnancy and occurred at the age of 36.

In an effort to convince the petitioner to surrender this contract and to give up any claims to it, Defendant Cooley verbally harassed the petitioner, threatened to beat her, threatened to strip search her, and threatened to fix bail with the Judge so that Ms. Rojicek

could go to jail. When Ms. Rojicek still did not buckle under this intimidation and duress, Defendant Cooley physically and sexually assaulted the petitioner.

Defendant Cooley also conspired with Justice Edmund Brown of Orchard Park, N.Y., to set bail at $750 since the petitioner had $641 on her. This arraignment was held in absentia since Justice Brown had already signed the commitment papers in a back room with Cooley and the actual arraignment of Ms. Rojicek was, in fact, nothing but a rubber stamp of a prior decision already made by Justice Brown. No legal counsel was present nor allowed nor was Ms. Rojicek allowed to represent herself pro se.

After this "arraignment" Ms. Rojicek was taken directly to the Erie County Holding Center in Buffalo, N.Y.. While being transported to the E.C.H.C.,

Defendant Cooley again offered to forget the arrest and give the petitioner her freedom in exchange for the contract. The petitioner refused to go along with this extortion attempt and spent 45 hours in jail hyperventilating and vomiting due to her medical condition, anxiety, and psychological duress. The petitioner had started hyperventilating and vomiting in the hospital and continued to hyperventilate and vomit while both in custody of the defendants and the E.C.H.C.. During her incarceration the petitioner was denied effective medical attention and was further intimidated by witnessing (within 5 minutes of petitioner's arrival) a savage beating of a female prisoner by a male guard at the E.C.H.C.. While this guard was beating the inmate, approximately twelve other male guards stood around clapping and taking bets as

to how many times the guard could hit the inmate before knocking her out.

Two days later, the petitioner appeared before Judge Norman Keuhnel in Hamburg, N.Y.--the proper Court this time. Prior to this appearance, Defendant Bell approached the petitioner and asked to speak to her. The petitioner, who was in the custody of two N.Y. State Police Investigators at this time (Richard Olma and Lloyd Schwab), was given permission to speak to Defendant Bell. Defendant Bell took the petitioner aside and told her that his father would not pay her a dime, that his father would pay witnesses to perjure themselves in any breach of contract suit, and threatened her life if she stayed in N.Y.. After making these and other threats, Defendant Bell left. These threats

occurred in a New York courtroom while Court was in session.

The petitioner appeared with last-minute substitute counsel who was late before Judge Keuhnel. Judge Keuhnel lowered her bond to $500. Ms. Rojicek was able to secure her release from custody and go home to Illinois.

A week later the Petitioner's criminal attorney, Joel Daniels, called her in Illinois to inform her that all charges against her were being dismissed and she needed to appear in court in Buffalo on 10/31/79. She went to court on that date. Defendant Bell approached Mr. Daniels and talked to him. Mr. Daniels took the petitioner aside and informed her that he had a release for her to sign. This release was brought to court by Defendant Bruce Bell and was drawn up by Paul Cambria, Albert Bell's

attorney in the paternity action, and required the petitioner to give up any claims against Al Bell for the breach of contract. In return, all charges would be dismissed and no record would exist of petitioner's arrest. The petitioner refused this new extortion attempt and did not appear in court on that date.

In December 1980 the charge of burglary was dismissed without indictment or presentation to the grand jury. All misdemeanor charges were dismissed in April 1980 at the request of the D.A. because of questionable proof.

TRIAL BACKGROUND

The petitioner retained David Jay, a Buffalo attorney, in May 1980 to file a state breach of contract suit against Albert Bell and a Civil Rights suit against the above-named three defendants.

A trial by jury was commenced on

October 9, 1985 and concluded October 29, 1985. Trial was held before Justice Edmund Maxwell, a U.S. magistrate in the Federal Court--Western District of New York. The Petitioner was represented by David Jay, a private attorney, and the police defendants were represented by Patrick McCormack, an assistant New York State Attorney General.

The jury returned a verdict of no cause of action against defendants Cooley and Bell on October 29, 1985, upon which a judgment was entered on November 1, 1985. At the conclusion of the Petitioner's presentation of her case, the cause of action against Arthur Buczkowski was withdrawn and dismissed since Justice Maxwell was threatening Petitioner with attorney fees and court costs if he was continued as a defendant.

POST-TRIAL BACKGROUND (DISTRICT COURT)

Petitioner, on November 7, 1985, filed two motions pro se: one for a judgment notwithstanding the verdict and a second for a new trial on a multitude of grounds. The court below denied both motions in an order entered on March 28, 1986, after oral argument which was held March 26, 1986.

Petitioner, on April 6, 1986, filed a motion for a new trial on the grounds of newly discovered evidence and fraud upon the Court by Patrick McCormack and for reargument and reconsideration of the March 28, 1986 order. The Court below denied the motions in a Decision and Order filed April 23, 1986. Petitioner filed a notice of appeal on April 23, 1986 which was returned by the District Court on the advice of the Appellate Court so that the latest order which

Petitioner was ignorant of when she mailed her Notice of Appeal on April 21, 1986 could be included. A final notice of Appeal was filed on April 29, 1986, which included all the orders being appealed.

APPEAL BACKGROUND

Appeal was taken to the Second Circuit, Court of Appeals, in New York City. Petitioner filed three briefs for appeal--the main brief, a reply brief and a supplemental brief. Defendants, now represented by Ms. Denise Hartman, another Assistant New York Attorney General, filed two--a reply brief and a supplemental brief. All these briefs were timely filed.

Oral argument was heard on March 31, 1987. On April 7, 1987, a decision and order was filed reaffirming the judgment of the District Court and the orders

denying Petitioner's post-trial motions.

Petitioner filed a petition for rehearing on April 15, 1987. This petition was denied without comment by order entered May 13, 1987.

Additionally, Petitioner also filed a Petition for a Writ of Mandamus on March 17, 1987 seeking relief because of her inability to get correct transcripts from the court reporter in Buffalo. On June 25, 1987 the Appellate Court had the audacity to deny it as moot--of course it was. This denial of a writ of Mandamus allowed both the District Court and the Appellate Court to deny Petitioner due process guarantees provided under FRAP 10.

SPECIAL PARTICULARITIES OF TRIAL

After oral argument before the Appeals Court, Ms. Denise Hartman, opposing counsel on Appeal, approached

Petitioner and said that no one looks good in this case. Reference was not only to the two attorneys in this case, but also the trial judge. Petitioner strongly agrees and adds that this trial was more like a three ring circus with the two attorneys and the trial judge each representing a ring.

Petitioner's Former attorney:

Petitioner has been the victim of not only an incompetent but most probably corrupt attorney who intended to sabotage his client's claims in Court in view of his background and actions in Court despite the comments of the Appellate Court. David Jay is a noted Buffalo Civil Rights attorney who has argued Constitutional issues before this Court. He has over twenty years' experience and is chief legal counsel for the New York Civil Liberties Union. His alleged

sympathies are suppose to lie with constitutional issues but his "alleged" trial strategy makes one wonder if he even knows that the Constitution exists. A malpractice suit will be soon filed against him by an attorney. However, a malpractice suit does not properly address the actions of the other trial officers which were also causative of the due process violations suffered by the Petitioner.

David Jay failed to represent his client in the following ways:

1. He allowed, without objection, hearsay evidence that was prejudicial to his client and obscured the issues the jury was to decide. This hearsay evidence was not germane to the issues of the trial.

2. He brought a kitchen sink to Court to mock the amount of hearsay

evidence against his client after the jury retired for deliberation. Justice Maxwell and Patrick McCormack were as amused as he was with the kitchen sink and were not affronted by either his action or the obvious violation of Petitioner's due process protections that resulted in not limiting inflammatory and prejudicial hearsay evidence.

3. He refused to rebut defense claims by any vigorous cross-examination.

4. He refused to allow his client to rebut perjured testimony and manufactured evidence by not allowing her to take the stand for rebuttal after the case in chief.

5. He refused to impeach the testimony of Michael Polelon, a police witness for the defense who was never a witness to anything because he was never present during the arrest of Petitioner

and, therefore, the complainant statements were never properly notarized. His comment to the jury regarding Poleon's testimony during summation was: I bet he hopes he never has to testify again. He never told the jury why.

6. His summation was, in essence, a subliminal character assassination of his client and her claim which refuted his client's testimony and claims.

7. He knew his client's claims required pointing out abundant circumstantial evidence and yet he made no attempt to bring this abundant circumstantial evidence to the jury's attention either during summation or trial.

8. Incredibly, he stipulated twelve manufactured pictures that never showed up for six years into evidence which were against his client's testimony and which were, in fact, manufactured for trial

just before (or during) trial. Even more incredibly, these pictures were entered into evidence during his own examination of Defendant Bruce Bell.

9. He furnished Patrick McCormack with his client's file, including personal correspondence, in a breach of lawyer-client privilege after the close of discovery. These notes were entered into trial.

10. Other incompetencies appear on the record of this case. These, along with the forementioned, are amplified in detail in motions and briefs filed with the Courts below.

Opposing counsel:

It is against common sense that McCormack and his defendants and witnesses would have taken the risks they did during trial unless they knew they would be protected--either by prior

knowledge that David Jay was or would be incompetent or by prior knowledge that exposure was not part of the game plan. These risks included:

1. The introduction of a manufactured diagram of the Orchard Park, N.Y., police barracks during trial. This diagram was prepared immediately before trial by McCormack's brother and was changed while in the possession of Patrick McCormack which the trial record proves. Since he also had blueprints as the trial record proves, the question is why the diagram was changed: the obvious correct answer was that it was changed to impeach Petitioner's testimony and her own drawing during trial that accurately reflected the layout of the Orchard Park police Barracks. Incidentally, Justice Maxwell allowed the jury to view this diagram for 31 pages of Defendant

Buczkowski's testimony without it being entered into evidence. He previously had refused to allow Defendant Bruce Bell to hand-draw a diagram of the barracks (as Petitioner did) stating that there were too many diagrams already. (Petitioner's diagram was the only one in evidence at that time). He also refused to allow David Jay to enter pictures the Petitioner took of the Barracks to prove the perjury of the defendants and their witnesses although the Court, itself, called for the sidebar which resulted in the introduction of twelve manufactured pictures into trial.

2. The introduction of twelve manufactured pictures into trial of the Bell residence which purportedly showed the condition of the house and were claimed to be taken on October 17, 1979 which were, in fact, manufactured for trial

just before the start of trial. After trial, an additional picture was found in the working file of Patrick McCormack by the private investigator hired by the Petitioner. This 13th picture proved that other pictures introduced into trial were manufactured but was withheld by McCormack so that manufactured evidence could be entered upon David Jay's stipulation instead. Additionally, Patrick McCormack spent three hours at the Bell residence a week before trial (as trial records and testimony prove) and could easily see that remodeling had taken place. A strong circumstantial possibility exists that he even took some of these pictures. Additionally, he also had Petitioner's trial testimony and pretrial depositions to remind him that the pictures introduced into evidence were not authentic.

3. After trial, a letter from Patrick McCormack to David Jay was found confirming the fact that his office would pick up Petitioner's file and zerox what was needed and then return the file to David Jay. This zeroxing included personal notes written to David Jay and background information of the case and was written after the close of discovery.

4. Calling Investigator Michael Poleon to testify. The trial record shows that Patrick McCormack deliberately deceived the Petitioner during his examination of her into believing Poleon was a uniformed trooper peripherally present at the Barracks on October 17, 1979. However, Michael Poleon was an Investigator at that time and was for several years before. McCormack was aware of this fact since he had affidavits from Poleon prior to trial con-

firming this, always referred to him as an investigator during pretrial proceedings, and continued to refer to him as an investigator once Ms. Rojicek was no longer on the stand.

The District Court:

Although a Judge has discretion, this discretion is not unlimited. The trial record shows a repeated one-sided consistency in making rulings favorable to the defendants in the admission of evidence. Additionally, the Court allowed evidence ruled inadmissible--whether by stipulation of the two attorneys or by the Court itself--to be used consistently against the Petitioner. Each and every ruling was ignored by the attorneys and the Court leading one to question if rulings against the admission of evidence were made so that the lack of evidence could be used against the

Petitioner. Serious considerations for this writ of certiorari are:

1. The Court allowed his rulings to be ignored and used against the Petitioner during Patrick McCormack's summation. These rulings are amplified in briefs and motions filed in the lower Courts.

2. The Court refused to allow David Jay to raise objections during the summation of Patrick McCormack.

3. When proof of manufactured evidence (the twelve pictures and the diagram of the barracks) was furnished to the Court during oral argument on March 26, 1986, the Court refused further hearings and inquiries or to admit the proof into evidence or to reverse the judgment despite:

a. The Court's own personal knowledge that the police defendants used

manufactured evidence and committed perjury to obtain a verdict in their favor.

b. The Court's own comment during oral argument: If they (the jury) felt that this evidence was manufactured it would seem to me they would have held differently than they did. (See, oral argument transcript, p. 36).

Other instances of the unusual nature of Rojicek v. Cooley, et al. follow in reasons why this writ of certiorari should be granted.

REASONS FOR GRANTING THE WRIT

A review of the trial record of Rojicek v. Cooley, et al. will confirm that 42 U.S.C. 1983 and its related remedies have now gained the same notoriety that prior state remedies for civil rights violations had prior to the enactment of Title 42 legislation--

namely, a piecemeal remedy not designed or capable of properly addressing civil rights issues. This was not the intent of Congress when enacting this legislation.

Due process represents a profound attitude of fairness between man and man, and more particularly, between the individual and government. It is in the public interest that trials which arise from a conflict between the individual and his government, i.e., civil rights trials, be subjected to the closest scrutiny possible since such trials, by their very nature, can result in a continuum of original government abuse instead of justice.

When Federal District and Appellate Courts limit review to affirmation of immunities only--judicial discretion and the jury's responsibility to

determine credibility--and care not wit whether constitutional guarantees or due process was suspended and/or violated during trial a writ of certiorari is warranted. The lower Courts' sanctioning of the denial of petitioner's constitutionally protected rights during trial and closed door policy against post-trial review warrants the exercise of this Court's power of supervision.

Closed doors are expressly prohibited in Civil Rights actions. A higher standard of factual specificity applies to civil rights complaints since the Courts recognize that it is an important public policy to weed out the frivolous and insubstantial cases at an early stage in the litigation while still keeping the doors of the Federal Courts open to legitimate claims. This public policy not only allows meritorious civil rights

claims access to the courts, it protects public officials, policemen and citizens employed by government and in general from considerable expense, vexation and perhaps unfounded notoriety.

Since open doors swing two ways, an additional burden is also placed upon the Court. The Court cannot deny access to the Courts and must insure that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. The judiciary not only has an obligation to insure access to the Courts for victims of civil rights violations but also to inquire further when allegations are made. Not only does this public policy insure access of individual citizens to the Courts, it also helps assure/reassure all citizens of the

integrity of the judicial system which is a Court's social responsibility. This social responsibility is especially important today in view of Operation Greylord and other notorious cases which impugn the integrity of the judicial system since citizens have an inalienable right to honest and fair government and it is in the public interest for Courts to reaffirm this right.

As general statements Petitioner argues:

1. Rojicek v. Cooley, et al. violates the intent of Congress when 42 U.S.C. 1983 and 1985 were enacted.

2. The trials of Civil rights actions can become a continuum of the original action including not only the original defendants but also officers of the Court. This possibility, when strong circumstantial evidence is present during

the trial and proof is offered to the Court after trial, requires the lower Court to inquire further and not limit review to the trial itself. Rojicek v. Cooley, et al. was denied further inquiry and review by the District Court even though the Petitioner's issues required it.

3. The petitioner was denied proper review of post trial motions by the District Court and issues raised on Appeal by the Appeals Court because of the lower Courts' convenient, legal, but unjust use of broad immunities in reviewing Rojicek v. Cooley, et al.. The use of such broad immunities prevented proper review of Constitutional issues properly before this Court and of important public concern. Granted, these broad immunities are questions of law clearly decided in accordance with well established princi-

ples of law and not an appropriate subject of a writ of certiorari. However, their use in Rojicek v. Cooley, et al. is not appropriate to the peculiar particularities of the questions raised on appeal.

4. The District Court has failed to meet its judicial social responsibility to assure the public at large and Petitioner in particular that integrity exists in its Courtroom and the judicial system by its closed door policy against further inquiry. The court's refusal amounts to an abuse of discretion in Rojicek v. Cooley, et al. and a sanctioning of felonies committed by government in its Courtroom.

5. Rojicek v. Cooley, et al. should be examined by this Court so that it can furnish needed authority in future 42 U.S.C. 1983 and 1985 actions and more

clearly expound on not only the intent of these statutes but also provide guidance for after trial inquiries by District Court judges. It is Petitioner's position that the very intent of 42 U.S.C. 1983 and 1985 statutes require mandatory follow up by the Courts below:

a. When allegations of lawyer misconduct exist since, if these allegations are proven, the same statutes again would apply for civil redress against these attorneys. Future actions would be, by definition, continuums of the original action.

b. When police defendants and others would have to further conspire with officers of the Court to deny a plaintiff of due process and access to the Courts in Civil Rights cases by having the merits of a petitioner's claims based almost solely on credibility

functions deliberately and unfairly impugned by government itself.

c. When plaintiffs, after trial, offer proof to the Court that their due process rights under the Fifth Amendment to the Constitution have been violated through the deliberate, unlawful, and malicious use of manufactured evidence and perjured testimony of the defendants and their witnesses.

d. Because it serves the public interest for the Courts to publicly recognize the power of the government over the individual and its ability to abuse this power. Action based upon this recognition is in the public interest because it maintains the appearance of judicial integrity when cases come before the Court which involve, while not brethren, supporting staff of the judicial system.

Specifically, Petitioner requests review of the following issues and errors committed by the trial court and sanctioned by the Court of Appeals which, if allowed to go uncorrected, would have a great and adverse impact upon the public in general:

1. Improper impeachment of the Petitioner was allowed by the District Court through references by opposing counsel of evidence ruled inadmissible at trial during summation. Although it could be argued that Petitioner's attorney did not object, this argument begs the question that the District Court would not allow him to object during the summation and so instructed him when he made his first objection. It is Petitioner's position that the Court is also responsible for its own rulings. Not only was it the Court's duty to see that

its rulings were obeyed, it was the duty of opposing Counsel not to refer to evidence ruled inadmissible by the Court. Placing the entire responsibility on Petitioner's counsel begs the question of the responsibility of the other present Court Officers to insure due process in the Courts.

It could also be argued that the District Court denied Petitioner equal protection of the law when it refused to enforce its own rulings since the Court is the law--at least during trial and as a general principle his rulings must be obeyed. Other Courts might even have found the offending attorney in contempt.

Any general curative instruction given during the charge to the jury (what attorneys say is not evidence) does not insure that the jury was not affected by

the comments of opposing counsel. No adequate cure exists for references to evidence ruled inadmissible at trial except immediate condemnation of the court officer by the trial court.

Improper impeachment by references to evidence ruled inadmissible (or not adduced) at trial violates the Fifth Amendment right of due process. No opportunity is given during trial to present evidence to rebut the claims of opposing counsel since it was not allowed by the trial Court (or presented by counsel) during trial. References to such evidence also allows opposing counsel to misrepresent it in the first instance.

It is in the public interest that all trials be decided on their merit--through evidence presented at trial--and that all litigants have access to the Courts. The failure of the District

Court (and opposing counsel) to prohibit and not use such trial tactics and the sanctioning of such trial tactics by the Appeals Court requires that a writ of certiorari be granted.

2. While trial strategy is determined by the attorneys and not the Court, Petitioner submits that the Court has an obligation to make sure that trial strategy does not result in other constitutional abuses that adversely affect due process rights of litigants during trial.

The decision to have an abortion is a privacy right guaranteed by the Ninth Amendment to the United States Constitution. Additionally, it is a well established constitutional principle: If a right exists it matters not what motivates its exercise.

Although Rojicek v. Cooley, et al. was a civil rights action, the District

Court permitted the collateral issue of abortion during the trial as permissible trial strategy for the other side. Because the Court allowed the abortion issue, it also allowed issues of paternity in a continuation of trial strategy to impeach Petitioner's credibility. Questioning and testimony about the following was allowed:

a. Petitioner's sexual relation- with Albert Bell including a mathematical computation of the number of times Petitioner had sex with Albert Bell.

b. Petitioner's sexual relationships with others than Albert Bell.

c. Vibrators and their use.

Petitioner was no longer in the position of being able to offer positive proof that Albert Bell was the father of her baby--the abortion itself voided any possibility, i.e., H.L.A. blood tests,

etc.. The Court can hardly claim that it was not aware of this. However, that did not prevent opposing counsel from asking the jury during summation where her witnesses were that Albert Bell was the father. Opposing counsel went so far as to name a female friend of the Petitioner's in Florida and to insinuate to the jury that this friend could have been in Buffalo testifying in a Civil Rights trial in a nonexistent paternity trial for a pregnancy conceived in Florida and terminated in Buffalo before Petitioner's civil rights were violated in Buffalo.

Since the District Court allowed the collateral issue of abortion to be used as trial strategy, opposing counsel could make the following remarks during his summation:

"Now, is it believable, and by a fair preponderance of the evidence that

this woman ever wanted this child? Did she want that baby? She wanted that child and wanted to raise the baby and nurture it? Absolutely not. That child had a price on its head from the day she conceived. Did she want that baby? No, she wanted money. A lot of reasons for an abortion. It's a very volatile issue. Some women can't afford a child. Some women are too young, could have been a victim of rape. Doctors may have determined the baby has Downs Syndrome or has something else, a congenital defect. Maybe a family has four or five or six kids and can't afford the children . . . I'm not making a judgment on whether abortion is right or wrong here. We have a woman who expects you to believe that's all she ever wanted in the world. Why didn't she have the baby? Why, why, why? Thirty-six years of age, I.Q. of a hun-

dred and thirty-three to a hundred and sixty, working since age twenty. Her family is alive and well, she's capable of supporting herself, and she says she has a strong maternal desire. Boulder-dash. The baby had a price on its head and the price is in the contract. Twelve thousand three hundred and thirty-five dollars. Never intended to have that baby . . I have serious doubts about the genuineness of this woman . . when she goes ahead and has this baby eliminated. Every right to have this child and every opportunity, and she made the choice. No force or coercion here, no gun was at her head. If she was either in Florida or Chicago, she could have had that baby. . She's got a job, and she could support the child, raise the child and go to court. She didn't do that." See, McCormack summation, pp. 35-40.

Petitioner argues that the District Court's discretionary acceptance of "trial strategy" concerning the collateral issue of abortion violated the Petitioner's right of privacy guaranteed by the ninth Amendment to the United States Constitution and resulted in a violation of Petitioner's right of due process guaranteed by the Fifth Amendment to the United States Constitution during trial.

Due process was violated because of Petitioner's unwarranted and unconstitutional impeachment during trial and summation of a collateral issue that is a constitutional right that matters not what motivation exercises its privilege. Though Petitioner's attorney did not object to these comments (his first objection was on page 45), the District Court advanced one position over another in allowing a trial strategy to escalate

into infringement of the constitutional rights and constitutional protections Petitioner enjoys. Federal Courts trying Civil Rights actions meant to remedy prior violations of Constitutional privileges should not be the place where additional Constitutional privileges are violated.

Additionally, the Court was in error for not instructing the jury of Petitioner's (and their own) Ninth Amendment Rights when privileges protected by Con-Constitutional Amendment are allowed to be used as trial strategy. See, Roe v. Wade, 410 U.S. 113 (1973).

The trial strategy pursued by opposing counsel and permitted by the Trial Court without objection of Petitioner's Civil Rights trial lawyer additionally allowed the unwarranted impeachment of the Petitioner that she was

an extortionist only after money when the record shows (and both attorneys and the Court were aware of) the extreme medical lengths and problems she had previously gone through in unsuccessful pregnancy attempts. Petitioner argues that the Court's allowance and the Appeals Courts' sanctioning of this trial strategy also violates current Constitutional law. Though the federal government no longer has to fund abortions, women can, have, and always will depend on private financial resources for expenses necessitated by abortion--whether these funds are personal or otherwise does not support allegations of extortion. The right to use private funds is also a constitutional guarantee. See, Maher v. Roe, 432 U.S. 464 (1977).

It is in the public interest that trials be based on their merit, that

impeachment doesn't occur through appeals to the prejudices and passions of the jury, that litigants' characters are not assassinated through exercise of protected constitutional guarantees and privileges, and that the Courts promote the Constitution. The failure of the District Court to advance the Constitution and constitutional protections which resulted in a violation of due process and the sanctioning of such trial behavior by the Appeals Court requires that a writ of certiorari be granted.

3. Petitioner does not argue that opposing counsel does not have a right to speak freely about abortion and any other issue he desires--outside the Courtroom. His comments regarding the abortion of Petitioner, her reasons for having it, and what she could have done instead (not based on the record) would have been

better delivered from the pulpit of a Church rather than the lectern of a federal Courtroom. The trial Court took a liberal interpretation of First Amendment Rights when it came to opposing counsel--too liberal because the summation itself required reversal. Not only did it allow prejudicial comments and appeals to passions of the jury, it allowed opposing counsel to go off the record, mention and misrepresent evidence not adduced at trial and against prior rulings of the Court, and misrepresent evidence (testimony) during trial. (McCormack's summation was 87 pages long--Petitioner cannot cite it in this petition since there aren't enough pages allowed but assures this Court that the sections on abortion are representative of it. Petitioner also respectfully refers this Court to Rojicek's supplemental brief

filed on Appeal for particularities).

It is in the public interest that juries are the determiners of facts and credibility issues in a fair trial. Conversely, it is in the public interest to set aside jury verdicts that are reached through interference with the jury function through violations of due process--where credibility is unfairly impeached and cases are primarily based on credibility, i.e., Rojicek v. Cooley, et al. The failure of the District Court to limit free speech and the sanctioning of such trial failure by the Appeals Court requires that a writ of certiorari be granted.

4. The admission of the Monte Bolt notes into evidence was a violation of Petitioner's First, Fourtn and Fifth Amendment Rights and violated the intent of Congress when enacting 42 Title U.S.C.

1983. Petitioner's trial counsel made a motion in limine and requested a mini-suppression hearing to keep the notes out of evidence. The Court denied the motion and request and Petitioner's attorney made an exception for the record.

The similarity of conditions found in the seizure of purported obscene material in Mapp v. Ohio and conditions found in the seizure of these notes in Rojicek v. Cooley, et al. is striking, at least to this pro se litigant. See, Mapp v. Ohio 367 U.S. 643 (1961).

a. Both arrests were without warrant except that Petitioner's arrest was out of district and not given jurisdictional permission by the police department having jurisdiction.

b. Police officers came to private residences to make arrests. In Mapp v. Ohio they came to arrest someone else

in a different apartment while in Rojicek v. Cooley the arresting officer came to his parent's home and allegedly didn't know the purpose for his being summoned there.

c. In both arrests personal effects were seized by the police. In Mapp v. Ohio it was drawn pictures (later admitted drawn by Mapp) that were allegedly obscene and germane to the arrest of possession of obscene materials while in Rojicek v. Cooley, et al., it was personal notes written in Florida of an unmade telephone call for someone else in Florida to make found in Rojicek's purse that were not germane to the arrest of burglary.

d. The police in Mapp v. Ohio used the purportedly obscene pictures to prosecute Mapp. The police, in Rojicek

v. Cooley, et al. never intended to use these notes except as intimidation and blackmail in getting petitioner to give up her rights to sue Albert Bell. In fact, an officer (Richard Olma) brought them back to Petitioner when the police thought they had been successful in obtaining a waiver of the right to sue Albert Bell in release for not prosecuting the criminal charges on October 31, 1979. However, since Petitioner did not agree to these terms, the notes were returned to the station file.

e. In April 1980, Defendant Cooley, who confiscated the notes in the first place in his official duties, took these notes from the station file for his own personal use when he became aware of the Petitioner seeking redress for the wrongs committed against her during her arrest. In anticipation of pending litigation, he

claimed (stole) the notes and the notes became, in essence and in his own mind, personal property of his own to use as he wished.

f. Access to these notes was available only because of the vested police powers that allowed him to take these notes on the night of Petitioner's arrest.

g. Additionally, he continued to keep these notes after criminal charges were dismissed against the petitioner and any police custodial rights during pending criminal cases ended. (It's entirely possible that charges had already been dismissed since both the dismissal of charges and his personal confiscation of these notes occurred in April 1980).

These notes were used in the trial of Rojicek v. Cooley in further continuation of opposing counsel's intent to pic-

ture Petitioner as an extortionist. Their use was effective given the unwarranted abortion/paternity issues also allowed by the Trial Court which presented the same assessment of the Petitioner.

Petitioner argues that the second seizure of these notes in April 1980 (The first seizure in October 1979 resulted from arrest) violated her:

a. First Amendment rights because the notes are, itself, protected.

b. Fourth Amendment rights because the seizure was gained by an abuse of Police powers.

c. Fifth Amendment Right to due process of law because of the unfair impeachment of Petitioner's character through evidence sei :d in violation of other amendments.

It is in the public interest for the

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Courts to protect Constitutional rights even in civil trials. The failure of the District Court to recognize the award given to the defendants for Constitutional violations by allowing the introduction of these notes and the Appeals Court sanctioning of such awards requires that a writ of certiorari be granted.

5. The District Court's failure to intervene effectively during Rojicek v. Cooley denied Petitioner access to the Civil Court system, which is a denial of Petitioner's constitutionally protected right of due process under the Fifth Amendment to the Constitution. In addition to arguments presented above, the apparent denial of counsel for the plaintiff that allowed all the abuses in Rojicek v. Cooley, et al. to occur should have been recognized by the trial court and corrective measures taken by

the Court. Not only did the Court not take corrective measures during trial, it had sufficient opportunity to take corrective action after trial but failed to do so.

This Court could help insure other litigants from the same fate as this Petitioner if it would review prior decisions concerning the Sixth Amendment right to Counsel in Civil Rights cases where the potential of a continuum of government abuse is greater than in other cases. Plaintiff argues that for 42 U.S.C. 1983 actions to be successful (serve their intent) the Right to Counsel should be a constitutional guarantee since it was the intent of Congress that 42 U.S.C. 1983 and 1985 actions be successful when warranted. Without a right to Counsel expressly stated in Civil Rights cases, litigants such as this

Petitioner who did have counsel, loose warranted grounds for reversal by the trial court and Appellate Court because of incompetent counsel--either deliberate or otherwise.

The issues requiring review of this Court are not just those of Petitioner's attorney but also those of other Court officers. It is in the public interest that justice be served and justice was not served in Rojicek v. Cooley, et. al. The failure of the District Court to insure that Justice was served in Rojicek v. Cooley, et al. and the sanctioning of this failure by the Appeals Court requires that a writ of certiorari be granted.

Respectfully submitted,

Marlene J. Rojicek
Pro se

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UNITED STATES DISTRICT COURT

Western District of New York

MARLENE J. ROJICEK,
Plaintiff

vs. CIV-80-1164C

WILLIAM COOLEY, et al.,
Defendants

JUDGMENT IN A CIVIL CASE

FILED NOVEMBER 1, 1985

This action came before the Court for a trial by jury. The issues have been tried and the jury has reached its verdict.

It is ordered that there is no cause of action found in this case.

John K. Adams
Clerk

UNITED STATES DISTRICT COURT

Western District of New York

MARLENE J. ROJICEK,
Plaintiff

vs. CIV-80-1164C

WILLIAM COOLEY, BRUCE BELL and ARTHUR BUCZKOWSKI,
Defendants

ORDER DATED MARCH 27, 1986

FILED MARCH 28, 1986

The plaintiff having filed motions for Judgment Notwithstanding the Verdict and for a New Trial, and the defendants having filed a motion for allowance of attorney's fees to the defendants as prevailing parties in this action; and argument having been heard on March 26, 1986, the plaintiff, Marlene J. Rojicek , appearing on her own behalf, and the defendants by the Hon. Robert Abrams,

Attorney General, State of New York, Patrick O. McCormack, Assistant Attorney General, of Counsel, and due deliberation having been had, it is

ORDERED that the plaintiff's motions for Judgment Notwithstanding the Verdict and for a New Trial are DENIED; and it is further

ORDERED that the defendants' motion for allowance of attorney's fees pursuant to 42 U.S.C. 1988 is DENIED.

Edmund F. Maxwell
United States Magistrate

UNITED STATES DISTRICT COURT

Western District of New York

MARLENE J. ROJICEK,
Plaintiff

vs. CIV-80-1164C

WILLIAM COOLEY, BRUCE BELL and ARTHUR BUCZKOWSKI,
Defendants

DECISION AND ORDER DATED APRIL 22, 1986

FILED APRIL 23, 1986

The case was referred to the undersigned by the Hon. John T. Curtin pursuant to the consent of all parties. Plaintiff claimed that the defendants had violated her civil rights. On November 1, 1985, after a lengthy trial, a jury found that no cause of action existed against defendants. Plaintiff filed a motion for judgment notwithstanding the verdict and/or a motion for a new trial on November 7, 1985. Both motions were denied on

March 28, 1986. Plaintiff then filed the instant motions for rehearing and reconsideration, and for a new trial. The defendants have submitted an opposing affidavit.

As a basis for her motions, plaintiff asserts that new evidence suggests that certain witnesses may have perjured themselves. A review of the motions and supporting affidavits reveals no additional evidence which would warrant a review of my prior decision or a granting of a new trial. The additional evidence submitted consists of a photograph of an open dresser drawer in the Bell residence which was not offered into evidence at trial, and floor plans showing that the Bell residence has been remodeled.

The photograph is of a dresser in the Bell home with one drawer open. At trial defendants submitted a photograph

of the same dresser with two drawers open (Defendant's Exhibit S-8). A review of these two photographs does not indicate any evidence of perjured testimony or anything else which would have changed the jury's mind. Nor do the floor plans present any factual basis for the assertions that the pictures could not have been taken at the time so alleged by defendants. It is therefore

ORDERED that plaintiff's motions for a rehearing and reconsideration and for a new trial are DENIED.

Defendants have renewed their request for an award of attorney's fees. A similar motion was denied on March 28, 1986. This request is similarly DENIED. Defendants' motion to direct the plaintiff to post a cost bond is also DENIED.

So ordered.

Edmund F. Maxwell
U.S. Magistrate

UNITED STATES COURT OF APPEALS

For The Second Circuit

MARLENE J. ROJICEK,
Plaintiff-Appellant,

vs. 86-7338

WILLIAM COOLEY, BRUCE BELL and ARTHUR BUCZKOWSKI,
Defendants-Appellees

ORDER AFFIRMING JUDGMENT OF DISTRICT COURT DATED APRIL 7, 1987

FILED APRIL 7, 1987

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. A preliminary issue is whether appellant Marlene J. Rojicek filed a timely notice of appeal following the district court's denial of her FED. R. Civ. P. 59(b) motion on March 28, 1986. Rojicek, pro se, apparently attempted to file a notice of appeal on April 23, 1986, within the 30-day limit for filing such notice, but the district court clerk returned it because of a technical defect. She then re-submitted her notice of appeal and it was filed on April 29, 1986, which was beyond the 30-day limit. Given the circumstances, we treat Rojicek's notice of appeal as timely filed on April 23rd.

2. We note at the outset that this lawsuit turned almost entirely on the credibility of Rojicek and the other witnesses, and credibility determinations are matters for the jury. In addition, Rojicek challenges various evidentiary rulings made by Magistrate Maxwell, who presided over the trial. The magistrate was present to observe the trial as it unfolded and thus had broad discretion to decide what to admit or to keep out of evidence.

3. Rojicek claims that Magistrate Maxwell erroneously permitted hearsay testimony regarding her sexual relations with individuals other than Albert Bell. However, both attorneys in the case apparently for tactical reasons agreed to allow into evidence the prior relationships of Rojicek and Bell. Although she contends that her attorney did not object

to various rulings because he wanted to sabotage her case, we find that charge to be unsubstantiated. Thus Rojicek cannot just change her position now regarding such testimony and thereby obtain a new trial.

4. Rojicek claims that it was error to admit into evidence a document obtained by appellee William J. Cooley suggesting that she was trying to extort money from Monte Bolt. On direct examination, Rojicek had testified that Cooley questioned her about previous extortion attempts. Magistrate Maxwell ruled that the document was relevant to show what prompted Cooley to ask Rojicek those questions. We cannot say under these circumstances that the magistrate abused his discretion.

5. Rojicek claims Magistrate Maxwell erroneously limited her attorney's

cross-examination of Nurse Jane O'Malley, Lloyd Schwab and Arthur Buczkowski. The magistrate had broad discretion in regulating cross-examination, and we do not believe that he abused his discretion in making those rulings.

6. Rojicek claims that appellees' trial counsel made improper, prejudicial and false statements during his summation. We do not agree. Rojicek's trial counsel objected only once during the summation, on the ground that opposing counsel was making inflammatory statements. The magistrate then issued a curative instruction to the jury. The other objections that Rojicek now raises should also have been raised at trial so that the magistrate could consider them and cure them if necessary. In any event, appellees' counsel's summation focused primarily on Rojicek's credi-

ility, which was a central issue in the case.

7. Rojicek argues that her motion for a judgment notwithstanding the verdict or a new trial was improperly denied. At the heart of this case was the jury's assessment of the witnesses' credibility. Each side was permitted to offer relevant evidence to try to persuade the jury to believe its version of the facts. Since the jury was entitled to make its own credibility determinations, the motion was properly denied.

8. Rojicek claims that her Fed. R. Civ. P. 60(b) motion should have been granted because she had discovered a photograph that showed that appellees had given false descriptions of various photographs they introduced at trial. A Rule 60(b) motion, however, is not appropriate where the movant could have obtained the

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evidence in time for the trial. Here Rojicek stipulated to the admission of the photographs and did not cross-examine appellees' witnesses as to their accuracy. In addition, appellees argue that Rojicek could have used discovery to obtain the additional photograph in time for trial. Rojicek has not adequately explained why she was unable to do so. Thus, under these circumstances, it was not error for the magistrate to deny Rojicek's Rule 60(b) motion.

9. We have considered Rojicek's remaining arguments and find that they are without merit. We do not address Rojicek's claims against the court reporter regarding transcripts since Rojicek was able to obtain transcripts before this appeal was heard.

10. We affirm the judgment of the district court and the orders denying

Rojicek's post-trial motions.

Wilfred Feinberg, Chief Judge

George C. Pratt

Frank X. Altimari, Circuit Judges

Since this statement does not constitute a formal opinion of this court and it is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

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UNITED STATES COURT OF APPEALS

For The Second Circuit

MARLENE J. ROJICEK,
Plaintiff-Appellant,

vs. 86-7338

WILLIAM COOLEY, BRUCE BELL and
ARTHUR BUCZKOWSKI,
Defendants-Appellees

ORDER DENYING PETITION FOR REHEARING
DATED MAY 13, 1987

FILED MAY 13, 1987

A petition for rehearing having been filed herein by Plaintiff-Appellant, Marlene J. Rojicek, pro se,

Upon consideration thereof, it is

ORDERED that said petition be and it hereby is DENIED.

Present: Wilfred Feinberg, Chief Judge
George C. Pratt,
Frank X. Atimari, Circuit Judges
by: Elaine B. Goldsmith, Clerk

UNITED STATES COURT OF APPEALS

For The Second Circuit

MARLENE J. ROJICEK,
Appellant,

vs. 87-3004

WILLIAM J. COOLEY, et al.
Appellees

ORDER DENYING MOTION FOR WRIT OF MANDAMUS
DATED JUNE 25, 1987

FILED JUNE 25, 1987

A motion having been made herein by appellant pro se for a writ of mandamus,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied as moot.

James L. Oakes,

Thomas J. Meskill,

George C. Pratt, Circuit Judges

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FOURTH AMENDMENT:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT:

In all criminal prosecutions the accused shall enjoy the right to a speedy

and public trial, by an impartial jury of the State and district wherin the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

NINTH AMENDMENT:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

FOURTEENTH AMENDMENT:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1983

Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law,

suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. 1985
Subsection (2):

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such

court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstruction, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the law, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C. 1985
Subsection (3):

If two or more persons in any State or Territory conspire, or go in disguise

on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any

citizen or person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.